BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2017-292-WS

| | | |
|---|---|---|
| IN RE: | Application of Carolina Water Service, Inc. for Adjustment of Rates and Charges and Modification to Certain Terms and Conditions for the Provision of Water and Sewer Service | CWS' PROPOSED ORDER ON RECONSIDERATION |

This matter is before the Public Service Commission of South Carolina ("Commission") on the South Carolina Office of Regulatory Staff's ("ORS") Petition for Rehearing or Reconsideration in the above captioned docket. By Order No. 2018-345(A), the Commission granted Carolina Water Service, Inc. ("CWS" or "Company") approval of a new schedule of rates and charges and modifications to certain terms and conditions for the provision of water and sewer services for its customers in South Carolina.

In its Petition for Rehearing or Reconsideration, the ORS requested reconsideration of six issues on the following grounds: 1) the Commission erred in adopting a water rate schedule only proposed by CWS post hearing; 2) the Commission erred in rejecting the normalization of sludge hauling costs for the Friarsgate and Watergate treatment facilities, 3) the Commission erred in approving litigation costs incurred by CWS in lawsuits related to its "I-20" sewer system, 4) the Commission erred in approval of a 10.5% return on equity, 5) the Commission erred in its approval of costs incurred by CWS for a project which was still incomplete, and 6) the Commission failed to address the impact of the Federal Tax Cut and Jobs Act.

The Commission granted rehearing on these issues:

1. Sludge hauling expenses - the Commission directed CWS to update its sludge hauling expenses for the most recent period available and provide the amount of sludge hauled and the cost to transport the sludge on a monthly basis.
2. Litigation costs - the Commission directed CWS to set out the litigation costs by legal action, a description of the legal action and the outcome of status of each case. Further, both the ORS and CWS were directed to address the reasonableness of the fees and expenses in each case based on the factors in Commission Order 2006-543. The parties were directed to address these factors: (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer; (3) The fee customarily charged in the locality for similar legal services; (4) The amount involved and the results obtained; (5) The time limitations imposed by the client or by the circumstances; (6) The nature and length of the professional relationship with the client; (7) The experience, reputation, and ability of the lawyer or lawyers preforming the services; and (8) Whether the fee is fixed or contingent.
3. Friarsgate EQ basin liner project - the Commission stated that it would consider an update on the status of the EQ liner replacement including expenditures and the projected final completion date. The parties were directed to be prepared to address whether the expenses of the EQ basin remediation would have been required absent the plan to replace the liner.

4. Rate design - the Commission observed that the ORS was confusing rate design with rates resulting from a specific rate design as impacted by adjustments in the case. The parties were directed to describe the method used to determine rates.[1]

The Commission denied the ORS Petition for Rehearing or Reconsideration on these matters:

1. Federal Tax Cuts and Jobs Act - In denying the ORS petition on this issue, the Commission affirmed its ruling that the issue was to be addressed in Docket No. 2017-381-A.
2. Return on equity -In denying the ORS petition on this issue, the Commission affirmed that the evidence of record supports the Commission's ruling on the allowed return on equity.

## I. PROCEDURAL BACKGROUND

An evidentiary hearing was held September 6, 2018 at the Commission's offices in Columbia with the Honorable Comer H. (Randy) Randall presiding. CWS was represented by Charles L.A. Terreni, Scott Elliott and John M.S. Hoefer. Laura P. Valtorta represented the Forty Love Point Homeowners Association ("Forty Love") and James S. Knowlton appeared *pro se.* Jeffrey M. Nelson, Florence P. Belser, and Andrew M. Bateman represented the ORS.

The parties introduced, and the Commission admitted, the testimony and exhibits presented at the hearing on April 3-4, 2018 into the record. (Tr. p. 7). The parties also agreed that CWS would submit the expenses incurred for the conduct of this rehearing to the ORS for audit and to the Commission for approval in its next rate case. (Tr. p. 8).

ORS moved to strike the rebuttal testimony of CWS expert witness Keith Babcock because his testimony was offered to respond to the testimony of ORS' expert witness Steven W. Hamm,

[1] Order No. 2018-494 dated July 11, 2018.

but Mr. Hamm's testimony had been withdrawn. The Commission granted the motion to strike Mr. Babcock's rebuttal testimony. (Tr. pp. 8-10).

The Company presented the testimony of Michael R. Cartin, Director of External Affairs and Strategy (direct and rebuttal), Robert M. Hunter, Financial Planning and Analysis Manager (direct and rebuttal), and Bob Gilroy, Vice President of Operations (rebuttal), Kevin Laird, Regional Vice President for South Carolina of Goodwyn Mills and Cawood, Inc. ("GMC") (direct and rebuttal) and Keith M. Babcock, Esquire (direct). Mr. Cartin testified about the Company's operations costs associated with the Friarsgate WWTF equalization basin (EQ basin) remediation and liner repair project, the operating expenses of the Friarsgate WWTF, and the Company's litigation costs. Mr. Hunter testified about the Company's rate structure and rate design in this docket. Mr. Gilroy testified in response to the testimony of Ms. Hipp and in support of the Company's operations of its I-20 System. Mr. Laird testified about the status of the Friarsgate EQ basin remediation and liner repair project. Mr. Babcock gave his opinion about the reasonableness of the attorney's fees that CWS has sought to recover in this docket.

Forty Love presented the direct testimony of subdivision resident and customer Jay Dixon. He testified to problems experienced with the sewer system serving Forty Love Point. Mr. Knowlton presented no evidence.

ORS presented the testimony of Dawn G. Hipp (direct and surrebuttal) and Daniel Sullivan (direct and surrebuttal). Mr. Sullivan testified about ORS' position on normalization of sludge hauling costs. Ms. Hipp testified as to the ORS position on sludge hauling costs, the Friarsgate interconnection project, litigation costs and rate design.

## II. REVIEW OF THE EVIDENCE AND FINDINGS OF FACT

**1. Sludge Hauling**

The Commission granted rehearing on the issue of whether CWS should recover the full $284,233 of sludge hauling expenses incurred during the test year at the Friarsgate and Watergate wastewater treatment facilities or whether $96,892 should be removed from these expenses to reflect a three-year average of sludge hauling costs at the facilities as advocated by the ORS.

There is no dispute that CWS incurred $284,233 in sludge hauling expenses between September 1, 2016 and August 31, 2017. ORS contends, however, that the test year sludge hauling expenses were abnormally high. The Company had incurred $124,567 sludge hauling expenses between September 1, 2014 and August 31, 2015, and $153,223 between September 1, 2015 and August 31, 2016. (Tr. p. 352). Therefore, the ORS argues the expenses should be normalized and proposes that CWS recover $187,341, the three-year average of the expenses. (Tr. p. 352 ll. 8-9). Instead, CWS contends the test year reflected its known and measurable expenses for sludge hauling caused by DHEC's requirement that the sludge inventory be kept at a constant rate. (04/03/2018 Tr. pp. 358-360).

The Commission directed CWS to update its sludge hauling expenses for the most recent period available and provide the monthly amount of sludge hauled and its transportation cost in Order 2018-494. CWS' updated sludge hauling expenses for the five-month period from February through June of 2018 decreased substantially. (Tr. pp. 28-29). CWS witness Cartin explained the sludge hauling costs decreased due to the Company's rental of a sludge press which decreased the volume transported from the facility. (Tr. p. 29, ll. 2-12). Mr. Cartin also testified CWS had incurred other increased expenses at the Friarsgate facility, specifically the engagement of

Clearwater Solutions, a third-party manager for the site at a cost of $31,887.50 per month. (Tr. p. 22, ll. 11-23; Tr. p. 40, ll. 7-13)

Mr. Cartin said CWS has contracted for interconnection of the Friarsgate Facility with the City of Columbia. (Tr. pp. 19-21). If the agreement is approved by the Commission, the sludge hauling costs would be eliminated entirely when interconnection is achieved, which would be no earlier than the first quarter of 2019, but the Company will incur bulk service costs for sewerage treatment. (Tr. p. 35, ll. 1-17; p. 69, l. 18 - p. 70, l. 2).

ORS pointed to the recently lowered sludge hauling expenses and the possible interconnection with the City of Columbia as additional support for its proposed normalization adjustment. (Tr. p. 411, ll. 1-3). The Company countered that while its sludge hauling expenses may have decreased, other expenses, such as the Clearwater Solutions contract, have increased. (Tr. p. 40, l. 7 – p. 42, l. 12). It also points out that it has reduced this expense item by renting a sludge press and should not be penalized for simply exercising sound business practices. (Tr. p. 42, ll. 6-12). CWS' position is these expenses cannot be viewed in isolation, and therefore the test year should serve as the basis for measuring the sludge hauling expense.

The crux of the argument is whether the test year sludge hauling expenses were actually extraordinary. A normalizing adjustment is warranted only if an event has an extraordinary and non-recurring impact on operations. (Tr. p. 353, ll. 1-10). So, the determinative question is not whether the sludge hauling expenses during the test year were higher than usual, it is whether those expenses were non-recurring, and whether they were so high as to have an extraordinary and non-recurring impact on the operations. (Ex. 15, p. 3[2]). As Hahne and Aliff explain: "Many events, if

[2] Accounting for Public Utilities, Hahne and Aliff, Release No. 34, November 2017.

viewed in isolation, might be considered extraordinary or non-recurring, but if viewed from an overall operating perspective, might be a part of the routine cost of doing business". Id. Contrary to this principle, the ORS asks the Commission to focus exclusively on one expense item, but not on the overall cost of operating the Friarsgate plant, even though there is evidence that other expenses have increased. The Commission finds the proposed normalization adjustment is not warranted, and therefore denies the Petition for Rehearing or Reconsideration in this regard and the Commission's Order allowing the recovery of $284,233 in sludge hauling cost remains in effect.

**2. Litigation Costs**

In Order No. 2018-345(A) ("Order"), the Commission authorized the Company to amortize $998,606 in litigation costs associated with its I-20 sewer system over 66.67 years equating to $14,979 in annual expense. (Order p. 20). These costs were incurred for five legal actions: 1) a lawsuit brought by the Congaree Riverkeeper, Inc. ("Riverkeeper") in the United States District Court, 2) a condemnation action brought by the Town of Lexington ("Town"), 3) a challenge to DHEC's denial of a permit for the I-20 Plant in the Administrative Law Court ("ALC"), 4) the Company's challenge of DHEC's administrative order requiring a plan to interconnect the I-20 System with the Town's regional line without any assurance the Town would cooperate, and 5) CWS' lawsuit against the Environmental Protection Agency ("EPA") and the Town in the District Court. (Order p. 19). CWS presented the legal expenses were presented as a single expense item on the premise they all involved litigation over the I-20 System.

ORS argued the Commission should not have allowed recovery of any litigation costs, while the Company argued they were a recoverable known and measurable business expense. In

its Petition for Rehearing or Reconsideration, the ORS also argued, for the first time, that the Commission failed to assess the reasonableness of the legal expenses under the SCACR Rule 407 standard cited by the Commission in Order No. 2006-543.[3] [4]

The Commission granted rehearing, directing CWS to provide a breakout of the expenses incurred for each action listed above. The Commission also directed the parties to address the reasonableness of the fees for each case in light of the SCACR Rule 407 factors. (Order 2018-494).

In response to Order No. 2018-494, the Company amended its request to recover legal expenses as follows:[5]

| **Case** | **Hours** | **Cost** |
|---|---|---|
| Congaree Riverkeeper, Inc. v. CWS | 1,542 | $395,196.25 |
| Town of Lexington v. CWS (Condemnation) | 252 | $78,482.00 |
| S.C. Administrative Law Court - DHEC Permit Denial | 846 | $233,233.00 |
| S.C. Administrative Law Court - I-20 Connection | 194 | $51,039.00 |
| **Total Legal Fees** | **3,415** | **$904,360.50** |
| Expenses | | $12,319.91 |
| Advances | | $74,828.23 |
| **Total Legal Fees, Expenses and Advances** | | **$991,508.64** |

[3] Petition for Rehearing or Reconsideration, pp. 10-11.

[4] In Re: Application of Carolina Water Service Inc. for Adjustment of Rates and Charges, Order No. 2006-543, p. 27.

[5] Mr. Cartin testified the Company previously misidentified $5,617 in legal fees incurred for matters related to the Friarsgate WWTF and regulatory matters and $1,480.50 incurred for other matters as related to the I-20 litigation. Tr. pp. 33, 43.

**a. The I-20 litigation**

A review of the facts giving rise to the I-20 litigation is necessary to understand this dispute. Until February 1, 2018, CWS operated a wastewater treatment facility ("the I-20 WWTF") and collection and transportation system in Lexington County which provided service to approximately 2,200 customers in Lexington County. (4/3/2018 Tr. p. 289, l. 1-17; p. 352, ll. 6-12). Known as the "I-20 System" because of the facility's proximity to the interstate highway, it discharged into the Lower Saluda River. (Tr. p. 265, ll. 7-20). Pursuant to the applicable "Section 208 Plan", the operating permit for the I-20 System contained a condition requiring that the I-20 System be connected with the regional wastewater facility when such a connection became available. (Tr. p. 275, ll. 9-13). The designated regional management agency obligated to provide that connection with the regional facility to serve the I-20 System is the Town of Lexington[6] (Tr. p. 178, ll. 5-7; Tr. p. 180, ll. 4-13).

CWS witness Bob Gilroy testified at length about the Company's unsuccessful requests to the Town for the Town to interconnect the I-20 System. CWS made repeated attempts to obtain an interconnection with the Town's system --which obviously was under the Town's control. (Tr. p. 167, l. 11 – p. 168, l. 2). In July of 2000, the Town entered into an enforcement agreement with DHEC which acknowledged the Town lacked the capacity to take and treat flow from the I-20 System. (Tr. p. 168, ll. 10-14). Although capacity was apparently not available, in compliance with an ALC order, in 2003 CWS sought PSC approval for a proposed agreement for the Town to provide wholesale service to the I-20 System. The Commission refused to approve the agreement

[6] The "Section 208 Plan" is the 1997 Water Quality Management Plan adopted by the Central Midlands Council of Governments under Section 208 of the Clean Water Act. (Tr. p. 318, l. 6-16).

because the resulting rates would have been too high. (Tr. p. 165, ll. 15-22, p. 168, ll. 10-20, See also Order No. 2003-10).

In 2009, the Town contracted with the City of Cayce ("Cayce") to acquire capacity in the latter's expanded regional treatment facility and issued bonds to pay for its share of the cost of the new facility. (Tr. p. 168, l. 21 – p. 169, l. 3). However, the Town did not make CWS aware that the terms of its bond issue and contract with Cayce prohibited interconnection with CWS until late 2015. (Tr. p. 170, ll. 10-15). Unaware of these restrictions, CWS inquired about interconnection with the Town in 2011, 2013, and 2014, but was ignored or rebuffed each time. (Tr. 169, ll. 4-16 and Exhibit 7).

In the summer of 2014, after having refused to allow an interconnection in May of 2014, the Town indicated an interest in purchasing the I-20 System, if CWS would also sell the I-20 water system and the Watergate water and sewer systems. (Tr. p. 169, l. 13-21). CWS responded it would be willing to sell the two sewer systems. (Tr. p. 169, ll. 20-22). CWS provided the Town information about the two systems, but the Town never made an offer. (Tr. p. 170, l. 1-4).

Against this backdrop, the Riverkeeper sued CWS for violating its NPDES permit in January of 2015. (Tr. p. 170, l. 5-7). In 2016, CWS continued discussions with the Town about a purchase of the I-20 System and the Watergate system, making a price projection to the Town, but no offer was forthcoming. (Tr. p. 170, ll. 3-4, ll. 16-21).

In August of 2016, DHEC denied CWS' application to renew its NPDES permit and issued separate administrative orders requiring the Company and the Town to coordinate a plan to eliminate the discharges from the I-20 System into the Lower Saluda River. (Tr. p. 171, ll. 1-10). On March 30, 2017, the United States District Court issued an order finding CWS liable for

violating the terms and conditions of its NPDES permit and imposed a penalty of $1.5 million for violating the permit's requirement that it connect its system to a Section 208 provider, and a penalty of $23,000 for the effluent violations. (Tr. p. 265, ll. 13-22).

In May of 2017, the Town offered to purchase the I-20 System for approximately $1.3 million, an offer which CWS believed to be far below fair market value and, therefore, rejected. (Tr. p. 171, ll. 1-10; tr. p. 172, ll.14-17). In October of 2017, the Town brought a condemnation action against CWS, tendering $1.58 million as just compensation for the system. The Company rejected the Town's just compensation tender but did not oppose the Town taking possession of the I-20 System on February 1, 2018. (Id.). On February 28, 2018, the Town connected the I-20 System to its regional line and began transporting flow to the regional treatment plant operated by the Cayce plant. (Id.; Tr. p.303, ll. 13-16).

**b. Reasonableness of CWS' legal expenses**

CWS' expert witness, Keith Babcock discussed each of the legal actions causing CWS' legal expenses separately.

**i. Condemnation action**

At the hearing, counsel for CWS informed the Commission that CWS and the ORS had agreed to defer any action on the recovery of the attorney's fees and costs for the condemnation action until the conclusion of that case. The attorney's fees and costs would be placed in a deferral account until the action was concluded and subject to recovery in a subsequent rate case. (Tr. p. 245, l. 23 – p. 246, l. 14). Therefore, the Commission need not address the reasonableness of the condemnation expenses.

**ii. Federal cases**

The Riverkeeper sued CWS in federal court seeking to end the Company's discharge of effluent into the Saluda River. (4/3/2018 Tr. p. 290, ll. 7-12). Subsequently, CWS sued the EPA and the Town requesting an injunction to compel the Town to provide CWS with a connection of the I-20 System to the Town's regional line. (4/3/2018 Tr. p. 534, ll. 3-9). Mr. Babcock described the two federal cases as the Riverkeeper action and the suit involving the EPA. He testified that the complexity of litigation in federal court has made the practice more difficult and very expensive. (Tr. p. 223. l. 31 - p. 224, l. 2).

Mr. Babcock thought it significant that neither the EPA nor DHEC apparently believed the I-20 System discharges warranted their initiating an action. (Tr. p. 224, ll. 4-18). He testified it was important that the Commission consider that the lawsuit was still going on and the totality of this case could not be evaluated until it was concluded. Id. However, at this stage, Mr. Babcock found two facts particularly significant. Id. First, CWS did not initiate the action; it was sued by the Riverkeeper. Once the Riverkeeper sued CWS, Mr. Babcock opined the Company had no choice but to aggressively defend itself because the action sought to force an interconnection the Town refused to provide. He testified that his review of the record demonstrated that the defense by CWS' attorneys was aggressive, and, among other things, caused the District Court to issue its March 26, 2018, order which vacated the $1.5 million penalty it had imposed on CWS in its March 30, 2017, order. (Tr. p. 224, ll. 4 -18).

The second action in federal court was for a declaratory judgment and an injunction against the EPA and the Town of Lexington. Although a difficult case, Mr. Babcock opined that bringing the action was a smart strategic effort to break up the logjam created by the requirements of the

Section 208 Plan and the inability of CWS to gain an interconnection of the I-20 System from the Town. (Tr. p. 224, ll. 20-24).

**iii. Administrative Law Court actions**

CWS had two related cases before the ALC. One involved a challenge to DHEC's denial of CWS' permit to operate the I-20 WWTF, and the other stemmed from the Company's challenge to DHEC's administrative order requiring it to prepare plans to connect the I-20 System to the Town's regional line despite the Town's unwillingness to do so. (4/3/2018 Tr. p. 291, ll. 5-15; Tr. p. 225, ll. 2-7). Mr. Babcock testified the ALC handles nearly all the disputes with South Carolina state agencies including the granting or denial of permits by DHEC. Because of the high stakes and the amount of money involved in these permits, these actions are frequently hard-fought requiring numerous hours of work from attorneys and their staffs, which in turn, result in large invoices to the client. (Tr. p. 224, ll. 26-34).

Mr. Babcock described the primary case before the ALC as a challenge to DHEC's denial of CWS' request to reissue the wastewater discharge permit for the I-20 WWTF. (Tr. p. 224, ll. 37-40). The permit was critical to CWS because the permit allowed it to release effluent to the Lower Saluda River. Id. If CWS could not release into the river and could not connect to the Lexington system, it could not operate the I-20 System and would have left 2,200 customers without sewer service. Id.

Mr. Babcock described the second ALC action as involving a challenge to a DHEC administrative order which required CWS to present plans to construct a connection to the Town's line within 60 days after the DHEC permit denial became final. This action was necessary to protect the Company if the permit denial was ultimately upheld. (Tr. p. 225, ll. 2-7).

Mr. Babcock testified his analysis focused on the invoices submitted by Willoughby & Hoefer which totaled over 90 percent of the attorney's fees at issue. (Tr. p. 225, ll. 9-18). He also reviewed the invoices for the other firms and found them reasonable. Id.

For 2015, the fees and costs for Willoughby & Hoefer total $106,371.97; for 2016 fees and costs total $506,850.53; for 2017 fees and costs total $332,808.44. (Tr. p. 225, ll. 20-26). There are no Willoughby & Hoefer fees and costs for 2018 at issue in this proceeding because no invoices were submitted during the first two months of this year. Id.

Mr. Babcock testified that he thought it appropriate to use the standard set forth by this Commission in Order No. 2006-543. (Tr. p. 227, ll. 10-19). Mr. Babcock testified that the attorney's fees also satisfy the standard utilized by South Carolina courts in some other cases involving attorneys' fees. Id. See, e.g. *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991); *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997).

The first factor Mr. Babcock considered was the "time and labor required, the novelty and difficulty of the questions involved, and the skills requisite to perform the legal services properly." (Tr. p. 227, ll. 21-33). He testified that the invoices of record revealed a significant amount of time the lawyers at Willoughby & Hoefer devoted to these cases from September 2015 through 2018. Id. The invoices themselves are very detailed. Id. Mr. Babcock described these cases as difficult, particularly the Riverkeeper suit, the appeal of the DHEC permit denial, and the condemnation case. Id. He testified that only an experienced and skillful attorney would have undertaken these cases, and there is no question that Mr. Hoefer, Mr. Lowell and Mr. Johnston were competent to represent CWS Id.

Addressing the element of "the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer," Mr. Babcock testified handling cases of this magnitude would have affected the case load for these three attorneys. (Tr. p. 227, l. 35 – p. 228, l. 4).

The third factor is the fee customarily charged in the locality for similar legal services. Mr. Babcock testified that the fees charged by the Willoughby & Hoefer are lower than the fees charged in the Columbia area or other urban areas in South Carolina. (Tr. p. 228, ll. 6-9).

The fourth factor of "the amount involved and the results obtained." (Tr. p. 228, ll. 11-23). Mr. Babcock testified that, except for the declaratory judgment/injunction case involving EPA and the Town of Lexington, these cases were still ongoing, and the final results are unknown. Id. The declaratory judgment/injunction suit dismissed by the court was filed for strategic reasons. Id. Mr. Babcock testified that while winning this case would have been difficult, it was an appropriate legal action intended to encourage EPA to either modify the 208 plan or require the Town to provide the interconnection. Id. The stakes were simply too large not to make that effort. Once the Riverkeeper filed his lawsuit, CWS had no choice but to aggressively defend itself. Id. Furthermore, although a $1.5 million penalty was assessed by the District Court, the Willoughby & Hoefer firm successfully persuaded the District Court to vacate that penalty and allow further proceedings. Id.

The fifth factor is "the time limitations imposed by the client or by the circumstances." (Tr. p. 228, ll. 25-32). Mr. Babcock testified that, with one exception, the time factors were all dictated by the circumstances. Id. For instance, the Riverkeeper suit was brought in federal court, and Mr. Babcock explained the difficult and time-consuming requirements of federal court litigation. Id.

The two matters before the ALC were necessitated by actions taken by the Department of Health and Environmental Control. Id. Finally, the condemnation suit was initiated by the Town of Lexington, and the lawyers for CWS have aggressively been representing the Company in that action. Id.

The sixth factor is "the nature and length of the professional relationship with the client." (Tr. p. 228, ll. 34-38). Mr. Babcock contrasted the CWS attorney's fees and costs with that of the attorney's fees sought by the Riverkeeper in the federal court action. Id. There, the Riverkeeper has sought an award of $436,460.00 in attorney's fees, and $16,659.25 in costs, for a total of $453,119.25 (the Court has yet to rule on the request). Id. Mr. Babcock agreed with the Riverkeeper's evidence that typical billing rates for attorneys with over 20 years of experience would be over $400.00 per hour, attorneys with 15 years of experience would be in the $350.00 to $400.00 an hour range, and attorneys with four years of experience would be in the $250.00 to $300.00 an hour range. Id. Mr. Babcock concurred those are accurate ranges for lawyers with different amounts of experience in urban areas in South Carolina. Id.

Mr. Babcock testified that, the hourly rates used by the law firm of Willoughby & Hoefer are significantly lower than the ranges cited by the Riverkeeper. John Hoefer charged $315.00 an hour, Randy Lowell charged $270.00 an hour, and Chad Johnston charged $225.00 an hour. Mr. Babcock testified he would have expected these rates to have been much higher. However, Willoughby & Hoefer had a lower billing rate for CWS than other clients due to the long-standing relationship with CWS. (Tr. p. 228, ll. 34-38).

The seventh factor is "the experience, reputation, and ability of the lawyer or lawyers performing the services." Mr. Babcock was familiar with the Willoughby & Hoefer lawyers

retained to work on the litigation: John Hoefer, Randy Lowell and Chad Johnston. (Tr. p. 225, ll. 28-35). Mr. Babcock testified that Mr. Hoefer and Mr. Lowell are two of the finest lawyers throughout the state of South Carolina. (Tr. p. 229, ll. 1-7). He testified that Mr. Hoefer is an outstanding trial lawyer who regularly appears before administrative agencies, state and federal courts and has a well-deserved excellent reputation among the members of the Bar. (Tr. p. 225, l. 28 - p. 226, l. 19). Mr. Babcock described Mr. Lowell as a trial and an appellate court lawyer, whose practice area is environmental law. The South Carolina Supreme Court referred to Mr. Lowell in an opinion as an "environmental scholar," in *Georgetown Cty. League of Women Voters v. Smith Land Co.*, 393 S.C. 350, 356, 713 S.E.2d 287, 290 (2011). Id. Mr. Babcock described Chad Johnston, the third lawyer who spent significant time on these cases, as a fine young attorney. Id.

The final factor is "whether the fee is fixed or contingent." (Tr. p. 229, ll. 9-16). Mr. Babcock testified that the fees in in question were calculated using fixed hourly rates, which would have been the only way any attorney would have taken the two actions in federal court or the two actions before the ALC. Id. Mr. Babcock testified that while actions representing a landowner in condemnation cases are frequently undertaken on a contingency fee basis, that is not normally how larger corporations hire attorneys for condemnations cases. Id. Given the amount of money sought by CWS in the condemnation case, he testified, using an hourly fee approach almost certainly would be in the client's best interest. Id.

The ORS offered no testimony or evidence regarding the reasonableness of the litigation expenses according to the factors in Rule SCACR 407. The Commission finds Mr. Babcock's testimony persuasive, and concludes the fees incurred by CWS were reasonable.

**c. Recoverability of the Litigation Costs**

The ORS contested the recoverability through rates of the litigation costs associated with the federal actions and argued for deferral of recovery of the litigation costs associated with the condemnation and administrative proceedings until those matters were finally concluded. The ORS took the position that that CWS should not be authorized to recover the litigation costs associated with the Riverkeeper's case and CWS' lawsuit against the EPA and the Town of Lexington because those costs were not spent for the benefit of the ratepayers. ORS argued that recovery of the litigation costs associated with the condemnation case and the ALC proceedings should be deferred until their conclusion. (Tr. p. 382, l. 18 - p. 383, l. 16).

**i. Federal Court litigation expenses**

Regarding the litigation costs associated with the Riverkeeper case, Ms. Hipp argued the Company's shareholders should be held responsible for the burden of legal costs related to legal actions in which the Company was found to have violated its environmental permit. She testified that to hold otherwise would eliminate any incentive for regulated utilities to operate in compliance with federal, state and local laws. (Tr. p. 412, ll. 16-18). Ms. Hipp did not believe these litigation expenses were incurred for the benefit of the ratepayer. Id.

Congaree Riverkeeper Bill Stangler testified that his organization sued CWS in federal court to end the discharge from the I-20 System into the Lower Saluda River.[7] Mr. Stangler acknowledged that the Riverkeeper had argued in District Court for eliminating the discharge even if CWS had no alternative means of discharging the effluent (Tr. p. 337, l. 1 - p. 338, l. 2), a fact

[7] The Congaree Riverkeeper, Inc. was the plaintiff in the lawsuit. Mr. Stangler is employed by the non-profit corporation with an eponymous title. (Tr. p. 274). In this Order, we refer to the organization as "the Riverkeeper".

which ORS could not dispute. (Tr. p.449, l.16 - p.450, l. 15). It is undisputed that the Town, even though it was the Section 208 Plan's designated management agency obligated to take the flow from the I-20 System, was precluded by the terms of its bond covenants and contract with Cayce from interconnecting the I-20 System to the Town's facilities. (Tr. p. 329, ll. 2-18). The Town appears to have only developed any interest in acquiring the I-20 System after DHEC issued its 2016 administrative order. (Tr. p. 170, ll. 10-15; p. 171, ll. 1-10; p. 172, ll. 8- 9).

The Riverkeeper lawsuit not only threatened CWS with a fine, but also sought to compel CWS to end its discharge into the Saluda River, even without an alternate source for discharge, an outcome which would have effectively forced CWS to terminate service to 2,200 sewer customers in the I-20 System. (Tr. p. 337, l. 1 – p. 338, l. 20). The Riverkeeper acknowledged that its attorney argued as much to the federal court:

> Q. "Did he [the Riverkeeper's attorney" not say that "Shutdown of a facility that is not complying with the Clean Water Act is relief that we sought"
>
> A. He said that, yes."
> (Tr. p. 338, ll. 15-20).

Mr. Babcock correctly testified that "once the Riverkeeper began the action against CWS, it had no choice but to aggressively defend itself because the action was based on the need for an interconnection which the Town refused to provide." (Tr. p. 224, ll. 12-14).

Prudently incurred litigation costs are an allowable operating expense of a regulated utility. For example, the Company's I-20 related litigation costs were approved as part of the settlement of the Company's last rate case. (Tr. p. 395, l. 19 - p. 396, l. 12; p. 461, l. 462, l. 11 and Order 2015-876). The Commission finds the litigation costs associated with the Riverkeeper suit were necessary for the Company to preserve its opportunity to provide continued investment in and

maintenance of its I-20 System and continue to provide reliable and high-quality utility services and these expenses were prudently incurred and are recoverable.

Regarding the litigation costs for the CWS action against the EPA and Town of Lexington, Ms. Hipp testified that because the action was dismissed, there was no discernable benefit to the ratepayers and CWS should be denied recovery of these costs. (Tr. p. 383, ll. 3-10). Ms. Hipp acknowledges that the Town of Lexington served its condemnation notice approximately one year after the dismissal of the federal action against it. (Tr. p. 390, ll. 16-17). Mr. Babcock testified that the action was a "smart strategic effort" to force the Town of Lexington to accept responsibility for the treatment and discharge from the I-20 System. The Riverkeeper was determined to stop the discharge from the I-20 System into the Lower Saluda River, no matter the impact on CWS' customers. (Tr. p. 224, ll. 20-24). CWS' customers benefit from having sanitary sewer service and had CWS prevailed, its customers would have been the beneficiaries of that action.

The Company's lawsuit against the EPA and the Town was an integral component of its defense of the Riverkeeper's efforts to force CWS to eliminate a discharge when it had no ability to do so. The Commission will not second guess the Company's legal strategy. The Commission finds these expenses to have been prudently incurred to ensure continued service to CWS' customers and are recoverable.

ii. **ALC litigation expenses**

CWS incurred litigation costs of $233,223 in the DHEC permit denial appeal and $51,039 in the appeal from the DHEC administrative order to CWS to construct the connection to the I-20 System with the Town's regional line within 60 days of denial of the DHEC permit (even with no assurance from the Town to provide a connection). Regarding the two matters pending before the

ALC, Ms. Hipp testified that it is premature to allow the Company to recover the associated litigation costs from ratepayers before a final order has been rendered by the ALC. She recommended that the Commission establish a regulatory asset in which to defer the litigation costs for future rate making treatment. (Tr. p. 391, l. 1 - p. 392, l. 2). CWS incurred litigation costs of $233,223 in the DHEC permit denial appeal and $ 51,039 in the appeal of the order requiring it to plan an interconnection of the I-20 System without assurance that connection was available. The ORS does not dispute the amount, or the reasonableness, of these litigation costs. Unless it appealed the denial of its NPDES permit, the Company could not have continued to provide service to its customers because there was no interconnection with the Town's regional line available to CWS. CWS' decision to appeal the permit denial and contest DHEC's administrative order was prudent and reasonable under the circumstances. The Commission finds these expenses are recoverable.

**iii. Condemnation litigation costs**

The ORS recommended that the litigation costs relating to the condemnation action be deferred until the conclusion of the condemnation action. Ms. Hipp testified that the Company may prevail in the condemnation action and recover its litigation costs under applicable law. She advocated that the Commission establish a regulatory asset in which to defer the litigation costs for consideration and a prudency determination in future rate proceedings. (Tr. p. 417, l. 14 - p. 418, l. 2). During the hearing, counsel for the Company informed the Commission that CWS agreed to establish a deferral account for the condemnation litigation costs.

The Company sought condemnation litigation fees of $78,482 (Tr. p. 33; Babcock App. B). Mr. Babcock testified these legal costs were reasonable, which was not disputed by the ORS.

ORS also recommended reallocation of an additional $2,985 in legal fees and $52,442 in advances which CWS did not oppose (discussed at pp. 23-24 infra). Based on the agreement of the parties, the Company will establish a deferral account for $133,909 subject to recovery in a future rate case

**d. Challenges to specific costs**

**i. Winston & Strawn invoices**

Ms. Hipp challenged certain invoices for litigation costs. Specifically, Ms. Hipp challenged invoices totaling $20,377 from the law firm of Winston & Strawn, LLP stating "the invoices were for work in connection with a matter than was not the CRK [*Riverkeeper*] litigation. Further the descriptions did not reference the CRK litigation" (Tr. p. 415, l. 22 - p. 416, l. 2).

While the invoices reference legal services rendered in connection with "Employee Benefits and Executive Compensation" the firm's time entries show it was advising CWS and its attorneys at Willoughby & Hoefer about certain documents subpoenaed in the Riverkeeper action. For instance, the Winston & Strawn invoice dated March 11, 2016 refers to a subpoena in "South Carolina litigation".[8] The April 5, 2016 invoice repeatedly refers to discussions of a subpoena from "Plaintiffs' to Utilities, Inc. and preparation for a hearing on a motion to compel.[9] The May 5, 2016 invoice bills for attendance at a hearing on a motion to compel.[10] A cover letter dated May 9, 2016 refers to "the Carolina litigation".[11] An affidavit submitted by Winston & Strawn corroborates that the services provided pertain to the Riverkeeper action. (Tr. p. 415, l. 16 - p. 416,

8 Ex. 17 (Confidential). The Commission is able to discuss the content of the invoices, which were filed under seal, without breaching their confidential nature.
9 Id.
10 Id.
11 Id.

l. 6; Conf. Exhibit 17, DMH-2, p. 7, DMH 3, p. 16). The Commission finds these expenses to be recoverable.

**ii. Berkeley Economic Consulting, Inc.**

Ms. Hipp testified that fees and expenses paid Berkley Economic Consulting, Inc. should be disallowed because they were related to the Riverkeeper case. (Tr. p. 418, ll. 3- 7). Because the Commission finds the Company's defense of Riverkeeper to have been reasonable and necessary to ensure continued sewer service to the Company's customers, it also finds these expenses recoverable.

**iii. Hartman Consultants, LLC and Winthrop Real Estate Advisors**

Ms. Hipp recommended assigning $52,442 in advances paid for consulting services to Hartman Consultants, LLC and Winthrop Real Estate Advisors to the condemnation litigation and assigning them to a deferral account until the conclusion of that case. (Tr. p. 417, l. 14 - p. 418, l. 2). CWS does not oppose this recommendation. The Commission allows CWS to defer a request to recover these expenses until the conclusion of the condemnation case.

**iv. Miscellaneous expenses**

Ms. Hipp recommended disallowing $13,191.63 in miscellaneous expenses that were not assigned to a particular action. (Tr. p. 418, ll. 8-9). CWS opposed this adjustment because the expenses were incurred in the regular course of business and therefore presumed reasonable. The Commission agrees and finds these expenses recoverable.

**v. Reallocated litigation costs**

ORS recommended the reallocation of $19,759 in legal expenses attributed to the ALC litigation to the Riverkeeper case. CWS did not oppose the reallocation (Tr. p. 45, ll. 3-6). The

ORS also recommended reallocating $2,985 from the federal suits to the condemnation case. CWS did not oppose this reallocation. (Tr. p. 45, ll. 7-10).

**vi. Redacted invoices**

ORS recommended the Commission exclude $155,974 in fees resulting from any item on any invoices that included a redaction. Citing one example of an invoice entry where the nature of the legal matter was unclear, the ORS objected to 152 such invoices. (Tr. p. 418, l. 14 - p. 419, l. 11; Exhibit 16 and Conf. Exhibit 17). ORS claimed the Company's need to protect the confidentiality of attorney-client communications or attorney work product was irrelevant. (Tr. p. 419, l. 21 - p. 420, l. 3). Historically, the ORS has accepted legal invoices with redactions. Mr. Cartin, a former ORS employee, testified that he had never encountered a circumstance where the ORS stood behind redactions to deny recovery of legal fees. (Tr. p. 44, l. 12 - p. 45, l. 2). The ORS position raises grave concerns over a utility's ability to recover legitimate litigation costs while protecting confidential information and litigation strategy. The matter at hand is the best example of the risk to the utility. The ORS was working with the Riverkeeper in mounting its defense to the recovery of legal fees. The Riverkeeper is also CWS' adversary in federal court. If CWS redacts too sparingly, it may recover its costs in rates, but may unwittingly provide crucial protected insight to its legal adversary.

An inspection of the redacted entries reveals that ORS' heavy-handed approach was not justified. ORS disallowed expenses even when otherwise detailed time entries had one or two words redacted. [12] (See Exhibit 16 and Conf. Exhibit 17). The mere presence of a redaction in a

time entry is not sufficient to justify its rejection, but that is essentially the standard proposed by the ORS.

The Commission finds the practice of redaction to protect confidential information is reasonable,[13] further the ORS has failed to show these expenses were not reasonable or necessary. CWS should be permitted to protect the confidentiality of its' attorneys' legal strategy and recover its attorneys' fees.

**e. Summary of Recoverable Expenses**

CWS' recoverable legal expenses, after the agreed upon deferrals and reallocations, are summarized in the table below.

| **Case** | **Expenses** | **Reallocations** | **Expenses After Adjustments** |
|---|---|---|---|
| Congaree Riverkeeper, Inc. v. CWS | $395,196.25 | $19,759.00 | $414,955.25 |
| S.C. Administrative Law Court -- DHEC Permit Denial | $233,233.00 | ($19,759.00) | $213,474.00 |
| S.C. Administrative Law Court -- I-20 Connection | $51,039.00 | ($2,985.00) | $48,054.00 |
| **Total Legal Fees** | **$679,468.25** | **($2,985.00)** | **$676,483.25** |
| Expenses | $12,319.91 | | $12,319.91 |
| Advances | $74,828.23 | ($52,442.00) | $22,386.23 |
| **Total Legal Fees, Expenses and Advances** | **$766,616.39** | **($55,427.00)** | **$711,189.39** |
| **Deferred Legal Expenses** | | | |
| Town of Lexington v. CWS (condemnation) | **$78,482.00** | **$55,427.00** | **$133,909.00** |

[13] See e.g. *Ex parte Cannon v. Ga. Atty. General's Office*, 397 S.C. 541 (2012) (in which the Supreme Court reviewed an affidavit and redacted expense sheet when awarding fees).

**f. Amortization of Legal Expenses**

The ORS challenged the Company's proposed interest free amortization of $860,967 in legal expenses over 66.7 years. This amount would result in the Company collecting $12,914 per year to recoup its expenses (a reduction of $2,065 from the $14,979 collected under Order. 2018-345(A). In its Petition for Rehearing or Reconsideration, the ORS stated, "[t]here is additionally no precedent for, or evidence in the record of this case, to explain why the Company was permitted to expense legal fees over a period of 66.7 years. The reason the Company asked for these fees to be spread over such a long period is quite obviously to attempt to hide the absurdly high costs, incurred in a losing cause." (ORS Petition for Rehearing or Reconsideration, page 11). However, a lengthy interest free amortization period benefits the ratepayer, not the Company. (Tr. p. 120, ll. 3-9). A shorter period would only result in higher rates. Id. Indeed, in Docket No. 2015-199-WS, the ORS objected to CWS recovering I-20 litigation costs over a five-year period with a return but proposed instead that CWS recover its I-20 litigation costs over 66.7 years without rate base treatment which this Commission approved. (Tr. p. 86, l. 16 - p. 88, l. 7; Tr. p. 457, ll. 2 - 25). The Commission finds the Company's proposal to recover its litigation costs in a like manner is reasonable.

**g. Conclusion**

The Commission finds CWS is entitled to recovery of $860,967 in legal expenses to be amortized, without cost, over 66.7 years ($12,914 per year) is reasonable and will allow the Company to defer $133,909 until the conclusion of the condemnation action.

**3. EQ Liner**

The Commission granted rehearing on the issue of whether certain expenses incurred in connection with the removal and replacement of the liner of the equalization basin of the Friarsgate WWTF are recoverable in this rate case. The Commission specifically stated it would "consider an update on the status of the EQ liner replacement including expenditures and the projected final completion date" and "whether expenses of the EQ basin remediation would have been required absent the plan to replace the liner." Order 2018-494.

Mr. Cartin testified CWS is requesting recovery of $1,081,375.35 for removal of the EQ liner at the Friarsgate WWTF and remediation of the site. (04/03/2018 Tr. p. 318, l. 3 – p. 319, l. 2. Mr. Cartin testified the Company was not asking to recover the cost of the new liner. Id. CWS' witness, Kevin Laird, Regional Vice President of GMC, the professional engineering firm the Company hired to run the Friarsgate WWTF testified that the replacement of the EQ liner was on hold pending the Commission's approval of the agreement for interconnection of the Friarsgate WWTF with the City of Columbia. (Tr. p. 139, l. 3 – p.140, l. 5). Mr. Laird also stated the EQ basin would remain in use after interconnection with the City of Columbia. (Tr. p. 140, ll. 3-5). Mr. Laird explained that removal of the old EQ liner and remediation of the site was required by DHEC's Consent Order with CWS regarding operation of the plant and would have been required regardless of CWS' decision to replace the liner. (Tr. p. 140, l. 12 – p. 141, l. 10).

At the rehearing, ORS no longer challenged CWS' recovery of the costs of removing the old liner and remediating the site. ORS witness Hipp testified the agency agreed to include $1,079,132.84 in plant in-service for the costs incurred removing the old liner and removing the site. (Tr. p. 373, ll. 1-17). Ms. Hipp's recommendation reflected a minor adjustment of $2,242.51

for late fees and reinstallation of grass matting at the site which CWS did not oppose. (Tr. p. 373, ll. 18-23).

The Commission finds the costs incurred to remove the old liner and remediate the site were reasonably and prudently incurred and would have been necessary regardless of whether a new liner was installed. Therefore, the Commission finds the Company should be allowed to recover $1,079,132.84 in plant in-service costs incurred at the Friarsgate WWTF.

**4. Rate Design**

In its Petition for Rehearing or Reconsideration the ORS argued the Commission adopted a rate design which unfairly distributed CWS' revenue requirement between the Company's two water service territories. The ORS' argument was based primarily on customers in Water Service Territory 1 receiving a slight decrease in their basic facilities charge while Water Service Territory 2 customers had an increase. See Order 2018-345(A). When it granted rehearing, the Commission observed this was not so much an issue of rate design as one of how rates were calculated. Order 2018-494 directed the parties to describe the method used to determine rates for CWS' service territories. Id.

CWS witness Robert Hunter, the Company's Financial Planning and Analysis Manager, testified to how the rates adopted by the Commission were calculated, and provided a workbook of Excel spreadsheets used to create the rates. (See Tr. pp. 93-128, and Exhibit 3). Mr. Hunter explained that CWS has two water service territories, and that each service territory has water supply customers and water distribution customers. (Tr. p. 97, ll. 18-25). Each customer pays a basic facilities charge and a commodity charge. (Tr. p. 98, ll. 3-6). The two service territories were first established in the Company's previous rate case which followed the merger of three

companies, all subsidiaries of Utilities, Inc., with CWS. (Tr. p. 98, ll. 10-20, See also Order 2015-876). Within each service territory the basic facilities charge is the same for water supply and water distribution customers, only the commodity rate varies. (Tr. p. 98, l. 21 – p.99, l. 9). Mr. Hunter explained that rates for two service territories are calculated based on cost of service. (Tr. p. 101, ll. 1-9). The rates are therefore affected by several variables such as the number of customers, rate base, and water usage in each territory. Id. He explained that the main reasons the basic facilities charge in Service Territory 1 was lowered were adjustments for the recently enacted Tax Cuts and Jobs Act and a change in the allocation of property taxes. (Tr. p. 102, l. 7 – p. 103, l. 8). Mr. Hunter said neither service territories' customers were subsidizing the others. (Tr. p. 103, l. 7-10). Mr. Hunter explained that CWS eventually would like to charge the same rates for both service territories and stated the Company would work to achieve that goal. (Tr. p. 125, l. 21- p. 127, l. 21). After reviewing Mr. Hunter's testimony, ORS no longer challenged the Company's rate design or calculations. (Tr. p. 421, l. 15 – p. 422, l. 4; p. 440, l. 20 - p. 441, l. 4).

Therefore, the Commission finds the Company's rate design and method of calculating rates acceptable and it is unnecessary to revise it on rehearing.

**5. Forty Love Point**

The Forty Love Point Homeowners Association intervened questioning sewer service in the neighborhood. Jay Dixon, a resident of the Forty Love subdivision, testified that he and several neighbors had experienced sewer backups in their home and chronicled the efforts of CWS to address their concerns. (Tr. pp. 247-252).

CWS provides sewage collection-only services to Forty Love and Richland County treats the sewage. CWS has retained the GMC engineering firm to find a solution to the sewage backups.

(Tr. p. 45, l. 21 - p. 46, l. 9). GMC's Regional Vice President, Kevin Laird, testified that the Forty Love sewer system is a LETTS design installed by the developer. LETTS systems are modified septic tanks in which solid waste accumulates in a holding tank with the gray water draining to a common sewer main for transport to CWS' Hiller Road pump station. (Tr. p. 145, ll. 14-25). Some of CWS' customers have experienced sewage backups during periods of heavy rain. (Tr. p. 146, ll. 1-11). The backups appear to be caused by the close elevation of the customers' basement plumbing and the LETTS tank and the short distance between the LETTS tank and the collection line. (Tr. 146, ll. 12-23). GMC is installing pumps at these problem locations to relieve pressure and the LETTS tanks and prevent backups. (Tr. p. 146, l. 24 - p. 147, l. 3).

CWS also hired GMC to conduct a long-term assessment of the needs of the Forty Love System. (Tr. p. 147, l. 18 - p. 148, l. 18). GMC has recommended construction of a new permanent wet well and pump station to relieve pressure on the subdivision's collection line. Id. Mr. Laird testified this work is planned to be completed in January of 2019. (Tr. p. 148, l. 22 - p. 149, l. 3). Mr. Laird did not believe replacement of the LETTS system was warranted due to the expense and intrusiveness of such an undertaking. (Tr. p. 149, l. 13 - p. 150, l. 13). Mr. Dixon testified that he believed GMC had devised a good plan to address the problems experience in the neighborhood. (Tr. p. 249, ll. 2-14).

The Commission finds CWS' response to the backups experienced in Forty Love Point has been reasonable and prudent. On September 19, 2018 Forty Love moved for a supplemental hearing to update the Commission on the status of the work to the sewer system. CWS filed its engineering assessment of the Forty Love sewer system by GMC with the Commission September 28, 2018. On October 3, 2018, The Commission, declined to schedule a supplemental hearing and

requested that ORS monitor the project and report to the Commission monthly. Order No. 2018-667. The Commission believes these reports will be sufficient to ensure that it is kept informed of the progress of the system upgrades.

## III. ORDERING PROVISIONS

I. CWS may recover the expense of sludge hauling as provided in Order No. 2018-345(A).

II. CWS may recover $860,967 in litigation costs to be amortized, without cost, over 66.7 years ($12,914 per year).

III. CWS may establish a deferral account for litigation costs associated with the Town of Lexington's condemnation of the I-20 System.

IV. CWS may recover the cost of removing the EQ Liner and site remediation at the Friarsgate WWTF in the amount of $1,079,132.84.

V. CWS may recover rates calculated using the same formula that was used to calculate the rates approved in Order 2018-345(A). Changes to the Company's rates are attached as Exhibit A; all other rates and provisions of the CWS's tariff shall remain in effect.

VI. Order 2018-345(A) remains in effect in all respects not changed by this Order.

*Signatures on next page*

BY ORDER OF THE COMMISSION:

_____

Comer H. ("Randy") Randall, Chairman

ATTEST:

_____

Elliott F. Elam, Jr. Vice Chairman

EXHIBT A

**Carolina Water Service, Inc.**
**Docket No. 2017-292-WS**
**SCHEDULE OF PROPOSED RATES AND CHARGES**

# SEWER

**Service Territory 1 and 2**
(Former customers of Carolina Water Service, Inc., Utilities Services of SC, Inc. and United Utility Companies, Inc.)

***Former Customers of Carolina Water Service, Inc.***

**Monthly Charges – Sewer Collection & Treatment Only**

Where sewage collection and treatment are provided through facilities owned and operated by the Utility, the following rates apply:

| | Order 2018-345(A) | Rehearing Proposed |
|---|---|---|
| Residential - charge per single-family house, condominium, villa, or apartment unit: | $65.77 per unit | $65.76 per unit |
| Mobile Homes: | $47.94 per unit | $47.93 per unit |
| Commercial | $65.77 per SFE* | $65.76 per SFE* |

Commercial customers are those not included in the residential category above and include, but are not limited to, hotels, stores, restaurants, offices, industry, etc.

**Monthly charge – Sewer Collection Only**

When sewage is collected by the Utility and transferred to a government body or agency, or other entity for treatment, the Utility's rates are as follows:

| | | |
|---|---|---|
| Residential – per single-family house, condominium, or apartment unit | $65.77 per unit | $65.76 per unit |
| Commercial | $65.77 per SFE* | $65.76 per SFE* |
| Wholesale Service (Midlands Utility) | $N/A per SFE* | $N/A per SFE* |
| The Village Sewer Collection | $34.18 per SFE* | $34.17 per SFE* |

***** Single Family Equivalent (SFE) shall be determined by using the South Carolina Department of Health and Environmental Control Guidelines for Unit Contributory Loadings for Domestic Wastewater Treatment Facilities -- 25 S.C. Code Ann. Regs. 61-67 Appendix A, as may be amended from time to time. Where applicable, such guidelines shall be used for determination of the appropriate monthly service and tap fee.